

**What does the “technical violation”  
reference mean?**

**This is a purely hypothetical example.**  
**According to Dan Hebert, this type of**  
**calculation MAY OR MAY NOT become IRS**  
**policy at some point in the future.**

Date 02-11-2016

Board of Selectmen  
Town of Woodstock

**BOF letter to the BOS**  
**02-11-2016**

As you are aware, the Woodstock board of finance has been investigating concerns that the town of Woodstock healthcare program stipend program for town hall employees who opt-out of healthcare insurance may be in violation of the Affordable Care Act (ACA). Pursuant to suggestions made by the town attorney, the board of finance had requested opinions on the matter from both the town's insurance consultant and from the board of education's (BOE) TPA (third party administrator). Guidance received from the BOE's TPA suggests that while in technical violation of the affordability requirement of the ACA, Woodstock is, at this time, exempt from compliance and from penalties that could otherwise be imposed; however, after further review it appears that the town of Woodstock could fall under guidelines as an aggregated employer and be classified as an ALE (a large employer with > 50 employees) when all town employees are considered; this would include town hall employees, highway department employees and BOE employees as they are all funded through the town.

See for reference:

Link 1: <https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>

Particular reference to sections 6 and 8

Link 2: <https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer>

Particular reference to "Employer Aggregation Rules"

**The technical violation:** When the value of the opt-out credit someone could have received is considered as part of the "cost" of enrolling in the healthcare coverage, as is suggested in the guidelines, the "cost" to the employee is \$1163 in lost opportunity plus the monthly contribution of either \$216.67 or \$262.17 making the total "cost" to the employee either \$1379.67 for employee +1 per month or \$1425.17 for a family plan per month. Either of these costs is likely to be well in excess of the limits of 9.5% of household income for most employees, in fact several times higher than allowed, and would be in violation of the ACA affordability limits.

For someone with a \$40,000 salary this would be as much as 41% of their income for an employee +1, and 42.8% for a family plan. The limit under the ACA is 9.5%.

In the worst case, an employee with a \$40,000 salary, and no additional family income, with a family plan, any stipend or opt-out cash payment over \$654 per year could cause a violation — allowable cost  $\$40,000 \times .095 = \$3800$  less the employee contribution of  $\$3146 = \$654/\text{yr}$ .

We believe that these issues should be reviewed with the town attorney and plans should be drawn accordingly to either correct any possible violation or, if determined not be an aggregate employer and ALE at this time, to avoid a possible violation should there be any further guidelines issued that could affect our status.

Woodstock Board of Finance

A handwritten signature in cursive script, appearing to read "David Hosmer".

David Hosmer  
Chairman



Karen Munroe

From: Hebert, Dan <dhebert@lockton.com>  
Sent: Wednesday, December 16, 2015 9:32 AM  
To: Karen Munroe  
Subject: Request from Board of Finance  
Attachments: BOF Request on stipend.pdf

Hi Karen – Per our conversation and at your request I have reviewed the regulations with Our ERISA Atty and to directly answer the Board of Finance question asked in the attached memo that you provided:

- "Is the stipend for the Board of Education in violation of any regulation under ACA, ERISA or other federal or state department of labor regulations?"
  - o The direct answer is **NO, there is no violation**

For the purposes of speculation and for your internal reference, Lockton Compliance unit has published the following summary guidance/opinion:

**Cash Opt-Out Incentives:** We've written about and addressed in webcasts how, under IRS regulations related to the affordability of coverage for purposes of the individual mandate, cash opt-out credits are taken into account in assessing affordability. The theory is, if someone takes the coverage, the value of the opt-out credit the person **COULD HAVE RECEIVED** becomes part of the "cost" of enrolling in the coverage (e.g., if the employee contribution is \$200 per month and the employer offers a \$100 opt-out credit, the person who takes coverage is spending \$200 and foregoing an extra \$100, so the actual "cost" of the coverage is \$300).

**We've cautioned that the IRS will probably want to look at taxable opt-out incentives the same way, for purposes of the employer mandate and its affordability rules, but have noted that existing IRS employer mandate regulations don't address the issue.**

BenefitsLink published a piece from a law firm in which the authors described informal discussions they apparently had with the IRS. According to the article, IRS representatives said they thought that, for purposes of the employer mandate and its affordability requirements, these sorts of opt-out credits should be considered part of the employee's cost of coverage. **Bottom line:** If you have customers offering these opt-out credits, it's probably a good idea to consider them part of the employees' cost of coverage, in running your affordability analyses, even though the IRS has not yet taken a formal position on the matter.

Please let me know if you have any questions.

Regards,  
Dan

Daniel J. Hebert  
Assistant Vice President  
Account Executive  
Lockton Companies  
195 Scott Swamp Rd, Suite 201  
Farmington, CT 06032  
Tel: 860 678 4061  
Mobile: 860 751.4323  
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Email: [dhebert@lockton.com](mailto:dhebert@lockton.com)

Response from Dan Hebert  
to BOE and BOF  
12-16-2015



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**From:** Karen Munroe [mailto:KMUNROE@woodstockschools.net]  
**Sent:** Monday, December 07, 2015 3:03 PM  
**To:** Hebert, Dan  
**Subject:** Request from Board of Finance

Dan,  
Please see the attached letter from the Board of Finance.  
Please provide us with a response.  
Thank you,  
Karen

**Karen Munroe**  
**Business Manager**  
Woodstock Public Schools  
147A Route 169  
Woodstock, CT 06281

Office: 860-928-7453 ext. 310  
Fax: 860-928-0206  
Email: [munroek@woodstockschools.net](mailto:munroek@woodstockschools.net)

**Why don't the BOE and BOS combine health insurance plans to save money?**

**Combining plans is NOT RECOMMENDED at this time. The memo produced by the First Selectman, Superintendent, and both insurance brokers states concerns about increased costs to taxpayers. This concept is reviewed annually.**



To enable the Town to document that the above two recommendations are being enforced, the Town should continue to require proof of health care coverage for the employee through a health care plan offered by his or her spouse's employer.

I trust this responds to your inquiry.

Very truly yours,

Robert M. DeCrescenzo, Esq.  
Town Attorney

**BOF Meeting Minutes  
11-24-2015**

RMDe/psm

David Richardson as well as other members of the Board of Finance were disappointed that it had taken six months to receive a reply from the Town Attorney, and they felt that his answers raised more questions than answers.

David Richardson pointed out that under section 2 of the attorney's opinion letter the Town Attorney suggests getting a written opinion from the Town's Health Care consultant, as to whether the AFSCME contract is in violation of any regulations under ACA, ERISA, or other federal or state Department of Labor regulations. He would also like to get a written opinion on this issue from the Board of Education's Health Insurance consultant.

David Richardson feels that the Board of Selectmen and the Board of Education should meet to see if the Town's health insurance could be combined with the Board of Education's Health Insurance. He recently read in the Norwich Bulletin that the Town of Brooklyn has recently done so. It was the consensus of the Board of Finance that this option should be explored in Woodstock. Acting Superintendent Viktor Toth stated that he believed that there was a meeting scheduled sometime in December to discuss this issue, and he also feels that the school unions would not be opposed to this.

David Richardson would also like to get a firm dollar figure on how much the health insurance costs for an individual. He feels that stipend should be corrected to be ½ of the cost of an employee. He also pointed out that the people receiving the stipend do not have the weekly health insurance deduction taken out of their paychecks.

David Richardson also has concerns with item #6 in the attorney's response. He feels that he answered the question for union employees, but not the non-union employees. He feels that the attorney did not address the fairness issue of the Elected Officials and the Department Heads receiving the benefits that the union contract provides to union members.

Glen Lessig asked if a member of the Board of Finance had sat in on the Town Hall Employees union negotiations. The answer was no. However, David Richardson pointed out that the First Selectman negotiated on behalf of the Town, and felt that that was a conflict of interest for him to do so, since he received the same benefits that the union employees were bargaining for. It was pointed out by David Hosmer and Fred Chmura that the First Selectman is the authorized to conduct Town business, and that it would be awkward not to have the First Selectman in the negotiations. Jeff Kelleher thought perhaps that in the next negotiations that the First Selectman could designate another member of the Board of Selectmen to do the bargaining to avoid the appearance of a conflict.



# TOWN OF WOODSTOCK

415 ROUTE 169  
WOODSTOCK, CONNECTICUT 06281-3039  
WWW.WOODSTOCKCT.GOV

**DATE:** January 6, 2016

**TO:** Members of the Board of Finance

**FROM:** First Selectman, Allan D. Walker, Jr. *Allan D. Walker, Jr.*  
Acting Superintendent of Schools, Viktor Toth *V.T.*

**IN CONJUNCTION WITH:**

Daniel J. Hebert, Assistant Vice President, Account Executive,  
Lockton Companies  
Darlene Kish, CIC, CHC, Sr. VP and Partner, eBenefits Group  
Northeast, LLC

**SUBJECT:** Health Insurance Options for the Town of Woodstock and the  
Woodstock Board of Education

ASSESSOR  
860-928-6929

BUILDING  
860-928-1388

HIGHWAY  
860-974-0330

INLAND/WETLANDS  
860-928-1388

PLANNING & ZONING  
860-963-2128

RECREATION  
860-928-3396

SELECTMEN  
860-928-0208

TAX COLLECTOR  
860-928-9469

TOWN CLERK  
860-928-6595

TREASURER  
860-928-5935

FAX #  
860-963-7557

The following is a summary of a meeting between the Town of Woodstock and the Woodstock Board of Education held on December 2, 2015, where the pros and cons of health insurance consolidation between the Town and WBOE were explored.

**I. Summary**

- a. Town of Woodstock has approached Woodstock BOE (WBOE) for consideration of inclusion into the WBOE self-funded health and welfare plan with the hope joint healthcare coverage may save Woodstock taxpayers money.
- b. Town Plan is currently fully-insured and has approximately 15 employees covered and/or eligible.
- c. The WBOE plan is currently self-insured and has approximately 100 employees covered and/or eligible
- d. Both the Town and the WBOE pay opt-out money to those not taking the insurance plan offering(s).
- e. Town and the WBOE each have their own broker representation.
- f. WBOE plan is self-funded and negotiates annually with a stop loss carrier to contain individual large claim risk.
- g. WBOE has plan administrative fiduciary responsibility.
- h. The Town and the WBOE health insurance programs are funded from entirely separate budgets, and each budget is managed by a separate and independent, elected Board.

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## II. Town Perspective

### **Pros for the Town (to transition to self-funded)**

Lower costs are presumed in the first year because the current, fully-insured rate structure is higher than Woodstock BOE self-funded "COBRA" allocation rate structure.

### **Cons for Town (to transition to self-funded)**

- a. Changing how the Town currently pays for insurance from full monthly premium payments to self-funding (paying a third party claim payer [TPA] fees; paying a premium to an excess loss carrier [stop loss protection]; and paying claims as they are processed) will likely increase the financial liability and risk when moving to a self-insurance funding platform. In groups with as few members as the Town covers, any member experiencing a high number of claims will greatly affect the Town's healthcare budget line item.
- b. Remaining fully insured (not transitioning to self-funded) assures the Town that the medical and prescription claim risks (money incurred and paid) are capped within each monthly payment that the Town makes to the insurance carrier for the fully-insured plan. No additional money is required outside of the fully-insured premium payments.
- c. Under the fully-insured scenario, the insurance carrier (rather than the Town) owns all the administrative and fiduciary risk.
- d. In addition to the various premiums stated above, a significant amount of funding would be required to be placed into a special healthcare account to cover future healthcare claims.
- e. A self-funded plan bears all the risk and must negotiate a stop loss contract to cover individual large claim occurrences.
- f. While the Town's current health insurance plan is not subject to the Affordable Care Act (ACA) Employer mandates (pay or play obligations), on the day the Town (potentially) joins the WBOE's self-funded plan, the Town would be subject to and must comply with all ACA Employer requirements.
- g. The Town would inherit IRS 6055 & 6056 reporting obligations (1095 C and 1094 C reporting; also W-2 reporting to meet the individual and employer obligations of the healthcare law). This is burdensome and involves an investment of time to understand its complexities. Multiple

procedures and processes are required to produce the mandated reporting.

- h. The Town would have to formally comply with the Issuance of Summary of Benefit Coverage (SBCs).
- i. The Town would have to accrue, track, and make payment of specific fees/taxes required by the Healthcare Law (PCORI and Reinsurance ACA fees to be coordinated and paid) that are currently managed by the fully-insured carrier as part of its built-in, fully-insured premium payment. For example:
  - PCORI \$2.08 (was \$2.00 and will be indexed for inflation) per “belly button” on the plan due July 31, 2016.
  - Reinsurance Fee \$44.00 (was \$63.00) per “belly-button” on the plan.
  - Cadillac Tax 40% excise tax on annual premium rates in excess of \$10,200 single/\$27,500 family originally effective 2018, recently delayed by two additional years.

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### III. Woodstock Board of Education Perspective

#### **Pros for the BOE (to allow the Town to join the WBOE self-funded group)**

**There are none.** There is no initial or long-term “upside” for the WBOE to incorporate the Town into its health insurance plan at this time. The headcounts are not significant enough to gain any fixed cost benefit, nor to gain any claim negotiation benefit, nor to gain any claim risk leverage.

#### **Cons for BOE (to allow the Town to join the WBOE self-funded group)**

- a. Increased administrative procedures and processes relative to:
  - Monthly monitoring of Town claims
  - Coordination of ACA fee payments
  - Coordination of weekly issued claims and monthly fixed cost payments (stop loss and TPA)
  - Revisions of current plan documents and Summary Plan Descriptions (There are costs associated with revisions.)
  - Business Associate Agreement facilitation if plan generated data will be shared with Town (HIPAA concerns)
  - Shared decision making on potential benefit structure changes to plan offerings
  - Cadillac Excise Tax coordination



- b. One of the more challenging aspects of this is:
- When does accounting tracking and reconciliation of the Town's medical and Rx claim dollars paid happen with the Town to determine if a deficit or surplus has occurred? (How are medical claims, Rx claims, fixed cost expenses, and payments made from the Town to WBOE?)
  - If reconciliation is agreed upon, at what frequency is this managed?
  - If a surplus occurs, does the WBOE pay the Town, or hold it in reserve?
  - If deficit occurs, does the WBOE call additional money?
- c. These procedures need to be discussed and formally addressed prior to any consideration of including the Town.

#### IV. Other Potential Issues

- a. Coordination of medical and Rx plan(s) between the various Unions and non-union personnel employed by both the Town and the WBOE. At the moment, the WBOE offers a Copay PPO and a high deductible health plan. The Town currently offers a high deductible health plan of its own. All are different. Will a 4<sup>th</sup> plan need to be created? How is this done, and who will pay?
- b. Does the Town allow the WBOE to negotiate renewing financial plan cost components and benefit structures?
- c. The Broker of Record would need to be determined. Neither Lockton nor eBenefits Group will co-broker a plan with an outside agency due to liability reasons.

#### V. Conclusion

Based on the information and insight provided by Daniel J. Hebert of Lockton Companies and Darlene Kish of eBenefits Group Northeast, there is no financial advantage for either the WBOE or the Town of Woodstock to combine health insurance coverage plans at this time. In fact, entering into this type of arrangement could very well result in increased costs to Woodstock's taxpayers.

- cc. Members of the Board of Selectmen  
Members of the Board of Education  
Daniel J. Hebert, Lockton Companies  
Darlene Kish, eBenefits Group Northeast



Robert M. DeCrescenzo  
(t) 860.548.2625  
(f) 860.548.2680  
rdecrescenzo@uks.com

March 15, 2016

The Honorable Allan D. Walker, Jr.  
First Selectman  
Town of Woodstock  
415 Route 169  
Woodstock, CT 06281-3039

Re: Board of Finance Letter  
Re: Health Insurance Stipend

Dear Allan:

At your request, I have reviewed the February 11, 2016 letter ("The Board of Finance Letter") from the Woodstock Board of finance regarding the Town's health insurance stipend program and the Affordable Care Act ("ACA"). The following are my comments.

1. The Town of Woodstock employs less than 50 people. Therefore, by the terms of the ACA, as an employer, the Town is exempt from the ACA. As a result, the affordability requirement of the ACA cited in the Board of Finance Letter does not apply to the Town's health care plan.

2. I do not believe the Town, or any of its agencies should take the position that the workforce of the Board of Education should be combined with the Town for purposes of the ACA and that the Town falls under the ACA by virtue of the "aggregate employer" rule. The following is from the IRS website:

There is an important distinction for employers to keep in mind regarding these aggregation rules. Although employers with a common owner or that are otherwise related generally are combined and treated as a single employer for determining whether an employer is an ALE, potential liability under the employer shared responsibility provisions is determined separately for each ALE member.

Also, a special standard applies to government entity employers in the application of the aggregation rules under section 414. Because section 414 relates to common ownership and ownership isn't a typical arrangement for government entities, and because specific rules under section 414 of the Code for government entities haven't yet been developed, government entities may apply

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The Hon. Allan D. Walker, Jr.

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March 15, 2016

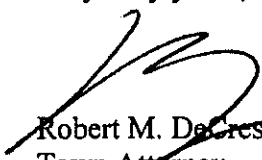
a good faith reasonable interpretation of section 414 to determine if they should be aggregated with any other government entities.  
(emphasis added)

Under Connecticut law, local boards of education are agencies of the state. Packer v. Bd. of Education of the Town of Thomaston, 246 Conn. 89, 140 (1990). Boards of Education are a separate employer from the Town. They have separate collective bargaining units, separate benefit plans and a separate employer-employee relationship. In the absence of a federal rule that explicitly states that municipalities and boards of education in Connecticut fall under the 'aggregate employer' rule, I believe a determination that the Town does not fall under the rule is a good faith interpretation of the ACA under Connecticut law.

3. The stipend in lieu of healthcare coverage is a bargained for benefit in the Town's collective bargaining agreement. The Town's bargaining agent is the Board of Selectmen acting through the First Selectman. Under MERA, the benefits the Town agreed to as part of the collective bargaining process can only be modified through that process.

I trust this responds to your inquiry. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Robert M. DeCrescenzo, Esq.  
Town Attorney

RMDe/psm